

**FILED**

**JUN 6 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

TUYET THI TRAN,

Petitioner,

v.

ALBERTO GONZALES,\*\*  
UNITED STATES ATTORNEY  
GENERAL,

Respondent.

No. 03-71658

Agency No. A43 464 464

MEMORANDUM\*

On Petition For Review of an Order  
of the Board of Immigration Appeals

Argued and Submitted April 5, 2006  
San Francisco, California

Before: SILER\*\*\*, RAWLINSON, and BYBEE, Circuit Judges.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* Alberto R. Gonzales is substituted for his predecessor, John Ashcroft, as Attorney General of the United States, pursuant to FED. R. APP. P. 43(c)(2).

\*\*\* The Honorable Eugene E. Siler, Jr., Circuit Judge, United States Court of Appeals for the Sixth Circuit, sitting by designation.

Petitioner Tuyet Thi Tran, a native and citizen of Vietnam and permanent resident of the United States, petitions for review of the Board of Immigration Appeals' (BIA) streamlined affirmance of the Immigration Judge's (IJ) order of removal for committing a crime involving moral turpitude. She provided two statements to Immigration and Naturalization Services (INS) agents and testified during her removal hearing that she shot her co-worker Loc Tuan Le. Thus, the IJ ruled she admitted the essential elements of aggravated assault under Texas law, which the IJ found to be a crime of moral turpitude. We agree.

She argues that two statements provided to INS agents should have been suppressed because (1) she was the focus of a criminal investigation and therefore improperly denied counsel under 8 C.F.R. § 292.5(b); and (2) her statements were coerced. In addition, she argues that she did not admit the essential elements of a crime involving moral turpitude because she acted in self-defense.

First, Tran was not the focus of a criminal investigation. *See United States v. Alderete-Deras*, 743 F.2d 645, 647 (9th Cir. 1984). Thus, she had no right to counsel under 8 C.F.R. § 292.5(b). *Trias-Hernandez v. INS*, 528 F.2d 366, 368-69 (9th Cir. 1975). In addition, Tran provides no specific evidence to determine whether her statements to INS agents were coerced other than a strip search that occurred prior to her second interview. As she does not allege the strip search was improper, we

cannot impute that it later coerced her second statement. *See Rostomian v. INS*, 210 F.3d 1088, 1089 (9th Cir. 2000).

Second, Tran admitted that she intended to hurt and shoot her co-worker, thereby establishing the elements of aggravated assault under Texas law. Texas Penal Code, Chapter 22, § 22.01(a)(1). *See Pazcoguin v. Radcliffe*, 292 F.3d 1209, 1213-15 (9th Cir. 2002). The IJ ruled that her action was more akin to premeditated assault because she planned to shoot her co-worker because of an argument and therefore she could not have prevailed on her self-defense claim. Nevertheless, she provided conflicting accounts in her statement of March 20, 2000, and her trial testimony was sufficient to support the IJ's finding that her self-defense claim was implausible. *See id.* at 1211. Accordingly, the testimony during the IJ's hearing is sufficient to support the finding that Tran admitted acts which constituted aggravated assault under Texas law.

Finally, her claims as to the statute of limitations or that a crime involving moral turpitude must be currently actionable are without merit. *See id.* at 1216.

PETITION DENIED.